

ORIGINAL

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DISTRICT COURT OF GUAM

MAR 23 2007

MARY L.M. MORAN
CLERK OF COURT

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IN THE UNITED STATES DISTRICT COURT
FOR THE TERRITORY OF GUAM

UNITED STATES OF AMERICA,

Plaintiff,

vs.

BING XIN XIE,

Defendant.

MAGISTRATE CASE NO. 07-00005

PLEA AGREEMENT

Pursuant to Rule 11(c)(1)(B), the United States and the defendant, BING XIN XIE, enter into the following plea agreement:

1. The defendant agrees to enter a guilty plea to an Information charging him with Illegal Entry, in violation of Title 8, United States Code, Section 1325(a)(1).

2(a) The defendant, BING XIN XIE, further agrees to fully and truthfully cooperate with Federal law enforcement agents concerning their investigation of alien smuggling, alien harboring, and the employment of illegal aliens on Guam. Cooperation shall include providing all information known to defendant regarding any criminal activity, including but not limited to the offense to which he is pleading guilty. Cooperation will also include complying with all reasonable instructions from the United States; submitting to interviews by investigators and

1 attorneys at such reasonable times and places to be determined by counsel for the United States;
2 producing to the United States all non-privileged documents (including claimed personal
3 documents) and other materials in the possession, custody or control of defendant requested by
4 attorneys and agents of the United States; and testifying fully and truthfully before any grand
5 juries, hearings, trials or any other proceedings where defendant's testimony is deemed by the
6 United States to be relevant. Defendant understands that such cooperation shall be provided to
7 any state, territorial, local or federal law enforcement agencies designated by counsel for the
8 United States. Further, it is understood and agreed that defendant shall not directly, indirectly, or
9 intentionally disclose anything defendant knows or had done concerning the United States'
10 investigation to anyone other than defendant's attorney. Defendant agrees to take no steps
11 directly or indirectly to warn any subject of this investigation that defendant, a subject or anyone
12 else is being investigated.

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14 (b) The United States will make this cooperation known to the Court prior to the
15 defendant's sentencing. The defendant further understands that he remains liable and subject to
16 prosecution for any criminal schemes of which he does not fully advise the United States, or for
17 any material omissions in this regard.

18 (c) This agreement is not contingent in any way upon the outcome of any investigation,
19 proceeding or subsequent trial. Thus, none of the rights and obligations described above are in
20 any way dependent upon a grand jury returning an indictment, a jury's verdict at any trial, or the
21 success of any prosecution.

22 (d) Except as otherwise herein provided, and in particular in Paragraph 9 of this plea
23 agreement, the United States agrees not to prosecute defendant for any other non-violent
24 offenses which were committed in the District of Guam or the Northern Mariana Islands (CNMI)
25 which defendant reveals to Federal authorities during his cooperation with the United States.
26 This agreement is limited to crimes committed by defendant in the districts of Guam or the
27 CNMI.
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2 3. The defendant, BING XIN XIE, understands that the maximum sentence for Illegal
3 Entry is a term of six (6) months incarceration, a \$5,000 fine and a \$10 special assessment fee,
4 which must be paid at the time of sentencing.

5 (b) If defendant cooperates as set forth in Paragraph 2, the government will recommend
6 that defendant receive a term of imprisonment of credit for time served, and immediate
7 deportation.

8 4. The defendant understands that to establish a violation of Illegal Entry, pursuant to 8
9 U.S.C.1325(a)(1), the government must prove each of the following elements beyond a
10 reasonable doubt:

11 First: the defendant was an alien;

12 Second: the defendant knowingly entered the United States at a
time and place other than as designated by immigration officers.

13 5. The Government and the defendant stipulate to the following facts:

14 (a) The defendant was born in 1971, and is a citizen of the People's Republic of China.

15 (b) Defendant, a citizen of the People's Republic of China, was living on Saipan. He
16 paid an individual to arrange for him to be smuggled into Guam by boat. On October 28, 2006,
17 defendant and several others were transported to Guam and dropped off in the area of Two
18 Lovers Point, where they waded ashore. This was not an area, nor was it at a time, designated by
19 immigration officers for official entry into the United States. Defendant knew he had no right to
20 enter or remain in the United States.

21 6. The defendant understands that this plea agreement depends on the fullness and
22 truthfulness of his cooperation. Therefore, defendant understands and agrees that if he should
23 fail to fulfill completely each and every one of his obligations under this plea agreement, or make
24 material omissions or intentional misstatements or engage in criminal conduct after the entry of
25 his plea agreement and before sentencing, the government will be free from its obligations under
26 the plea agreement. Thus defendant, in addition to standing guilty of the matters to which he has
27 pled pursuant to this agreement, shall also be fully subject to criminal prosecution for other
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1 crimes, and for the counts which were to be dismissed. In any such prosecution, the prosecuting
2 authorities, whether Federal, State, or Local, shall be free to use against him, without limitation,
3 any and all information, in whatever form, that he has provided pursuant to this plea agreement
4 or otherwise; defendant shall not assert any claim under the United States Constitution, any
5 statute, Rule 11(f) of the Federal Rules of Criminal Procedure, Rule 410 of the Federal Rules of
6 Evidence, or any other provision of law, to attempt to bar such use of the information.
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8 7. Defendant understands that whether he has completely fulfilled all of the obligations
9 under this agreement shall be determined by the court in an appropriate proceeding at which any
10 disclosures and documents provided by defendant shall be admissible and at which the United
11 States shall be required to establish any breach by a preponderance of the evidence.

12 8. The defendant understands that his sentencing may be continued, at the discretion of
13 the United States, until after the indictment and trial of any associates involved. This will also
14 enable the Court to see the full degree of the defendant's cooperation. The defendant therefore
15 waives any right he may have to any speedy sentencing and hereby agrees to any continuance of
16 his sentencing date as it may become necessary.

17 9. In exchange for the Government's concessions in this plea agreement, the defendant
18 waives any right to appeal or to collaterally attack this conviction but reserves the right to appeal
19 the sentence imposed in this case. The defendant agrees that the government has bargained for a
20 criminal conviction arising from his conduct. If at any time defendant's guilty plea or conviction
21 is rejected, withdrawn, vacated or reversed, for whatever reason, or if any change of law renders
22 the conduct for which he was convicted to be non-criminal, defendant agrees that he will enter a
23 guilty plea to another charge encompassing the same or similar conduct. In such event,
24 defendant waives any objections, motions or defenses based upon the Statute of Limitations,
25 Speedy Trial Act, or constitutional restrictions as to the time of bringing such charges.

26 10. The defendant acknowledges that he has been advised of his rights as set forth below
27 prior to entering into this plea agreement. Specifically, defendant has been fully advised of, has
28 had sufficient opportunity to reflect upon, and understands the following:

1 (a) The nature and elements of the charge and the maximum possible penalty provided
2 by law;

3 (b) His right to be represented by an attorney;

4 (c) His right to plead not guilty and the right to be tried by a jury and at that trial, the
5 right to be represented by counsel, the right to confront and cross-examine witnesses against him,
6 and the right not to be compelled to incriminate himself, that is, the right not to testify;

7 (d) That if he pleads guilty, there will not be a further trial of any kind on the charges to
8 which such plea is entered so that by entering into this plea agreement, he waives, that is, gives
9 up, the right to a trial;

10 (e) Because this plea is entered pursuant to Federal Rule of Criminal Procedure
11 11(c)(1)(B), the defendant understands that he may not withdraw his guilty plea even if the court
12 does not accept the sentencing recommendations of the government or his counsel;

13 (f) That, upon entry of a plea of guilty, or thereafter, the Court may ask him questions
14 about the offenses to which he has pled, under oath, and that if he answers these questions under
15 oath, on the record, his answers may later be used against him in prosecution for perjury or false
16 statement if an answer is untrue;

17 (g) That he agrees that the plea agreement is voluntary and not a result of any force,
18 threats or promises apart from this plea agreement;

19 (h) The defendant is satisfied with the representation of his lawyer and feels that his
20 lawyer has done everything possible for his defense.

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1 (i) This plea agreement has been translated into his native language and he fully
2 understands it.
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5 DATED: 3/22/07
6

BING XIN XIE
BING XIN XIE
Defendant

7
8 DATED: 3/22/07
9

Richard Arens
RICHARD P. ARENS
Attorney for Defendant

10 LEONARDO M. RAPADAS
11 United States Attorney
12 Districts of Guam and NMI

13 DATED: 3/22/07
14

By:

Karon V. Johnson
KARON V. JOHNSON
Assistant U.S. Attorney

15
16 DATED: 3/23/07
17

Jeffrey S. Strand
JEFFREY S. STRAND
First Assistant U.S. Attorney